

SENATE BILL 904

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P2

2004 Regular Session
4r1018
CF 4r1019

By: **The President (By Request - Administration)**
Introduced and read first time: March 1, 2004
Assigned to: Rules
Re-referred to: Education, Health, and Environmental Affairs, March 5, 2004

Committee Report: Favorable with amendments
Senate action: Adopted with floor amendments
Read second time: March 26, 2004

CHAPTER _____

1 AN ACT concerning

2 **Procurement - Small Business Procurement Contracts - Reserve Preference**

3 FOR the purpose of establishing a Small Business Reserve Program; designating the
4 types of procurements in which the Small Business Reserve Program may
5 participate; requiring certain procurement units to achieve a certain percentage
6 of small business procurement contracts under the Program; requiring the
7 Department of General Services to establish certain procedures to assist small
8 businesses; requiring certain procurement units to report to the Board of Public
9 Works by a certain date; providing for the application of certain provisions of
10 this Act; providing that the total dollar value of procurements by certain
11 procurement units do not include the value of certain contracts to which this Act
12 does not apply because of a conflict with federal law; defining certain terms;
13 providing for the termination of this Act; and generally relating to small
14 business procurement contracts.

15 BY adding to
16 Article - State Finance and Procurement
17 Section 14-501 through 14-505, inclusive, to be under the new subtitle
18 "Subtitle 5. Small Business Reserve Program"
19 Annotated Code of Maryland
20 (2001 Replacement Volume and 2003 Supplement)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
22 MARYLAND, That the Laws of Maryland read as follows:

1 **Article - State Finance and Procurement**

2 SUBTITLE 5. SMALL BUSINESS RESERVE PROGRAM.

3 14-501.

4 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
5 INDICATED.

6 (B) "DESIGNATED PROCUREMENT UNIT" MEANS:

7 (1) THE STATE TREASURER;

8 (2) THE DEPARTMENT OF BUDGET AND MANAGEMENT;

9 (3) THE DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT;

10 (4) THE DEPARTMENT OF THE ENVIRONMENT;

11 (5) THE DEPARTMENT OF GENERAL SERVICES;

12 (6) THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE;

13 (7) THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT;

14 (8) THE DEPARTMENT OF HUMAN RESOURCES;

15 (9) THE DEPARTMENT OF JUVENILE SERVICES;

16 (10) THE DEPARTMENT OF LABOR, LICENSING, AND REGULATION;

17 (11) THE DEPARTMENT OF NATURAL RESOURCES;

18 (12) THE STATE DEPARTMENT OF EDUCATION;

19 (13) THE DEPARTMENT OF STATE POLICE;

20 (14) THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL
21 SERVICES;

22 (15) THE DEPARTMENT OF TRANSPORTATION;

23 (16) THE UNIVERSITY SYSTEM OF MARYLAND;

24 (17) THE MARYLAND PORT COMMISSION;

25 (18) THE STATE RETIREMENT AGENCY;

26 (19) THE MARYLAND INSURANCE ADMINISTRATION;

27 ~~(20) THE INJURED WORKERS' INSURANCE FUND;~~

- 1 ~~(21)~~ (20) THE MARYLAND STADIUM AUTHORITY;
- 2 ~~(22)~~ (21) THE MARYLAND PORT AUTHORITY;
- 3 ~~(23)~~ (22) THE STATE LOTTERY AGENCY; AND
- 4 ~~(24)~~ (23) THE MORGAN STATE UNIVERSITY.

5 (C) "SMALL BUSINESS" MEANS:

6 (1) A CERTIFIED MINORITY BUSINESS ENTERPRISE, AS DEFINED IN §
 7 14-301 OF THIS TITLE, THAT MEETS THE CRITERIA SPECIFIED UNDER PARAGRAPH (2)
 8 OF THIS SUBSECTION; OR

9 (2) A BUSINESS, OTHER THAN A BROKER, THAT MEETS THE FOLLOWING
 10 CRITERIA:

- 11 ~~(+)~~ (I) THE BUSINESS IS INDEPENDENTLY OWNED AND OPERATED;
- 12 ~~(=)~~ (II) THE BUSINESS IS NOT A SUBSIDIARY OF ANOTHER BUSINESS;
- 13 ~~(=)~~ (III) THE BUSINESS IS NOT DOMINANT IN ITS FIELD OF OPERATION;
- 14 ~~(+)~~ (IV) THE WHOLESALE OPERATIONS OF THE BUSINESS DID NOT
 15 EMPLOY MORE THAN 50 PERSONS, AND THE GROSS SALES OF THE BUSINESS DID NOT
 16 EXCEED AN AVERAGE OF \$2,000,000 IN ITS MOST RECENTLY COMPLETED FISCAL
 17 YEAR 3 FISCAL YEARS;

18 ~~(=)~~ (V) THE RETAIL OPERATIONS OF THE BUSINESS DID NOT EMPLOY
 19 MORE THAN 25 PERSONS, AND THE GROSS SALES OF THE BUSINESS DID NOT EXCEED
 20 \$1,000,000 IN ITS MOST RECENTLY COMPLETED FISCAL YEAR AN AVERAGE OF
 21 \$2,000,000 IN ITS MOST RECENTLY COMPLETED 3 FISCAL YEARS;

22 ~~(+)~~ (VI) THE MANUFACTURING OPERATIONS OF THE BUSINESS DID
 23 NOT EMPLOY MORE THAN 100 PERSONS, AND THE GROSS SALES OF THE BUSINESS
 24 DID NOT EXCEED \$1,000,000 IN ITS MOST RECENTLY COMPLETED FISCAL YEAR AN
 25 AVERAGE OF \$2,000,000 IN ITS MOST RECENTLY COMPLETED 3 FISCAL YEARS;

26 ~~(7)~~ (VII) THE SERVICE OPERATIONS OF THE BUSINESS DID NOT EMPLOY
 27 MORE THAN 100 PERSONS, AND THE GROSS SALES OF THE BUSINESS DID NOT
 28 EXCEED \$1,000,000 IN ITS MOST RECENTLY COMPLETED FISCAL YEAR AN AVERAGE
 29 OF \$2,000,000 IN ITS MOST RECENTLY COMPLETED 3 FISCAL YEARS; AND

30 ~~(8)~~ (VIII) THE CONSTRUCTION OPERATIONS OF THE BUSINESS DID NOT
 31 EMPLOY MORE THAN 50 PERSONS, AND THE GROSS SALES OF THE BUSINESS DID NOT
 32 EXCEED \$4,000,000 IN ITS MOST RECENTLY COMPLETED FISCAL YEAR AN AVERAGE
 33 OF \$7,000,000 IN ITS MOST RECENTLY COMPLETED 3 FISCAL YEARS.

34 (D) "SMALL BUSINESS RESERVE" MEANS THOSE PROCUREMENTS THAT ARE
 35 LIMITED TO RESPONSES FROM SMALL BUSINESSES UNDER § 14-502(B) OF THIS
 36 SUBTITLE.

1 14-502.

2 (A) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, THIS
3 SUBTITLE APPLIES TO ALL PROCUREMENTS BY A DESIGNATED PROCUREMENT UNIT.

4 (B) THIS SUBSECTION DOES NOT APPLY TO PROCUREMENTS SUBJECT TO
5 SUBTITLE 1 OF THIS TITLE.

6 ~~(B)~~ (C) A DESIGNATED PROCUREMENT UNIT SHALL STRUCTURE ITS
7 PROCUREMENT PROCEDURES TO ACHIEVE A MINIMUM OF 10 PERCENT OF THE
8 UNIT'S TOTAL DOLLAR VALUE OF GOODS, SUPPLIES, SERVICES, MAINTENANCE,
9 CONSTRUCTION, CONSTRUCTION-RELATED SERVICES, ARCHITECTURAL SERVICE,
10 AND ENGINEERING SERVICE CONTRACTS TO BE MADE DIRECTLY TO SMALL
11 BUSINESSES.

12 (D) THE TOTAL DOLLAR VALUE OF PROCUREMENTS BY A DESIGNATED
13 PROCUREMENT UNIT DOES NOT INCLUDE THE VALUE OF CONTRACTS TO WHICH
14 THIS SECTION DOES NOT APPLY BECAUSE OF A CONFLICT WITH FEDERAL LAW.

15 14-503.

16 (A) THE DEPARTMENT OF GENERAL SERVICES SHALL ADOPT REGULATIONS
17 TO ESTABLISH PROCEDURES FOR COMPILING AND MAINTAINING A COMPREHENSIVE
18 BIDDER'S LIST OF QUALIFIED SMALL BUSINESSES THAT SHALL BE POSTED ON THE
19 DEPARTMENT'S WEBSITE.

20 (B) EACH DESIGNATED PROCUREMENT UNIT SHALL ENSURE COMPLIANCE
21 WITH THE REGULATIONS SET FORTH IN SUBSECTION (A) OF THIS SECTION.

22 14-504.

23 (A) ANY PROCUREMENT BY A DESIGNATED PROCUREMENT UNIT OF GOODS,
24 SUPPLIES, SERVICES, MAINTENANCE, CONSTRUCTION, CONSTRUCTION-RELATED
25 SERVICES, ARCHITECTURAL SERVICES, AND ENGINEERING SERVICES SHALL BE
26 ELIGIBLE FOR DESIGNATION FOR THE SMALL BUSINESS RESERVE.

27 (B) A SOLICITATION FOR PROCUREMENT THAT HAS BEEN DESIGNATED FOR A
28 SMALL BUSINESS RESERVE SHALL BE PUBLISHED IN THE SAME MANNER AS
29 REQUIRED FOR AN INVITATION FOR BIDS AS SET FORTH IN § 13-103(C) OF THIS
30 ARTICLE.

31 (C) THE PROCUREMENT OFFICER OF A DESIGNATED PROCUREMENT UNIT
32 SHALL AWARD A PROCUREMENT CONTRACT DESIGNATED FOR A SMALL BUSINESS
33 RESERVE TO THE SMALL BUSINESS THAT SUBMITS A RESPONSIVE BID THAT:

34 (1) IS THE LOWEST BID PRICE;

35 (2) IF THE INVITATION FOR BIDS SO PROVIDES, IS THE LOWEST
36 EVALUATED BID PRICE; OR

1 (3) IS THE BID OR PROPOSAL MOST FAVORABLE TO THE STATE WITHIN
2 THE SMALL BUSINESS RESERVE.

3 14-505.

4 (A) WITHIN 90 DAYS AFTER THE END OF EACH FISCAL YEAR, EACH
5 DESIGNATED PROCUREMENT UNIT SHALL SUBMIT A REPORT ON THE OPERATION
6 AND EFFECTIVENESS OF THE SMALL BUSINESS RESERVE PROGRAM TO THE BOARD
7 OF PUBLIC WORKS.

8 (B) WITHIN 60 DAYS AFTER RECEIPT OF ALL REPORTS REQUIRED UNDER
9 SUBSECTION (A) OF THIS SECTION, THE BOARD OF PUBLIC WORKS SHALL COMPILE
10 THE INFORMATION AND REPORT ON THE ENTIRE SMALL BUSINESS RESERVE
11 PROGRAM TO THE LEGISLATIVE POLICY COMMITTEE, SUBJECT TO § 2-1246 OF THE
12 STATE GOVERNMENT ARTICLE.

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
14 effect October 1, 2004. It shall remain effective for a period of 3 years and, at the end
15 of September 30, 2007, with no further action required by the General Assembly, this
16 Act, and any regulations adopted under the provisions of this Act, shall be abrogated
17 and of no further force and effect.